IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4353 of 2005

Between:

1 B. Nageswara Rao, S/o. Late Rayudaiah,
R/o. Moddulagudem Village, Dammapeta Mandal,

Khammam District.
2 B. Vasantha Rao, S/o. Late Rayudaiah,
R/o. Moddulagudem Village, Dammapeta Mandal,

Khammam District.

..... PETITIONERS

AND

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1 The District Collector, Khammam District, Khammam.
2 The Mandal Revenue Officer, Dammapeta Mandal,

Khammam District.
3 The Special Deputy Collector (TW), Bhadrachalam,

Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st and 2nd Respondents in dispossessing the petitioners from the land admeasuring Ac. 9-14 Gts. in Survey No. 225/A/4 of Nayudupeta Village, Dammapeta Mandal is illegal, arbitrary, erroneous, highhanded and violative of principles of natural justice and consequently direct the Respondents not to interfere into the peaceful possession and enjoyment of the petitioners with regards to the land admeasuring Ac. 9-14 Gts in Suvey No. 225/A/4 of Nayudupeta Village, Dammapeta Mandal.

Counsel for the Petitioners: MR.Y.V.RAVI PRASAD

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court at the admission stage made the following :

ORDER:

Questioning the action of the 1st and 2nd respondents in dispossessing the petitioners from the land admeasuring Acs.9.14 in Survey No. 225/A/4 of Nayudupeta Village, Dammapeta Mandal, the petitioners filed the present writ petition.

Basing on the complaint filed by one Mr. Raj Damodara Kumara Venkata Mahipal before the Special Deputy Collector Tribal Welfare, Bhadrachalam, to initiate action against the petitioners under A.P. Schedule Area Land Transfer Regulations, 1969 framed under Regulation 1 of 1959, a case in Case No.264/2000/DPT was registered. The Special Deputy Collector by order dated 4-12-2004 ordered ejectment of the respondent namely Bala Ranga Rao S/o. Rayudaiah, from the petition schedule land. Challenging the same the present writ petition is filed.

Learned counsel for the petitioner vehemently contended that the petitioners are in physical possession of the property in pursuance of the partition took place among the family members and that the Special Deputy Collector, Tribal Welfare, Bhadrachalam has no jurisdiction to entertain the case in view of the fact that the petitioners and respondents are non-tribals. In support of his contention, the learned counsel placed reliance on a judgment of this court in **Azizuddin and others v. Ashfaquddin and others**.

On the other hand, the learned Government Pleader for Social Welfare contended that under the Andhra Pradesh (Schedule Area) land Transfer Regulation, 1959 read with regulation 1 of 1970 the Special Deputy Collector is competent to decide the case so long as the land in schedule area, was never in possession of tribals. Therefore, it has to be required to be established before the competent authority.

Admittedly, an appeal lies to the Agent to the Government (Collector, Khammam) within a period of two months from the date of order in case No.264/2000/DPT. There cannot be any dispute that alternative order is not a bar for exercising the jurisdiction of this court under Article 226 especially under three circumstances. Firstly, in violation of principles of natural justice, secondly, when the authority lacks jurisdiction and thirdly, when the fundamental rights of the petitioner are infringed.

Insofar as violation of principles of natural justice is concerned, the petitioners are not parties to case No.264/2000/DPT, but one of the family members of the petitioners is a party to the case. Whether the petition schedule property is derived to the petitioners by virtue of partition, or not, is required to be established before the competent authority, since one of the family members was given opportunity. Now the petitioner cannot turn out and say that the principals of natural justice have been violated.

Insofar as the second contention is concerned, the learned counsel placed strong reliance on the decision, cited supra, wherein it was held that there is no provision in the Agency Rules which bars the jurisdiction of Civil Court either expressly or by necessary implication. In the instant case the disputes are between non-tribals in respect of lands situated in a Scheduled Area and there is no express or implied provision in the Agency Rules, which excludes the jurisdiction of the Civil Courts from holding cognizance of suit relating to disputes arising in a Scheduled area between non-tribals. The petitioners claim to be non-tribals, but, there is no material to show that they are non-tribals.

Rule 3(2)(a) of Agency Rules provides that where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and after due notice to him in the manner prescribed and may restore it to the transfer or his heirs.

Rule 3 (1) (a) provides that Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964.

Therefore, Rule 3(2)(a) of the A.P. Agency Rules confers jurisdiction on Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government. The Special Deputy Collector is an Agency Divisional Officer. The said fact is not disputed by both the parties. Therefore, the Special Deputy Collector is the competent authority to decide disputes arise under Andhra Pradesh (Scheduled Area) Land Transfer Regulation, 1959. Hence, the contention that the petitioners are not in possession of the property and they derived the same by virtue of partition amount the family members, is required to be decided by the competent forum, but certainly not by this court.

Therefore, the Writ Petition is disposed of with liberty to the petitioner to avail the remedy of appeal before the competent authority. No costs.

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K.C. Bhanu, J.

7th April 2005

Note: C.C. tomorrow.

B/o

Js.

To

1 The District Collector, Khammam District, Khammam.
2 The Mandal Revenue Officer, Dammapeta Mandal,

Khammam District.
3 The Special Deputy Collector (TW), Bhadrachalam,

Khammam District.

4 Two CCs to G.P. for Social Welfare, High Court Buildings,

Hyderabad.

5 2 CD copies.